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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/937,952	12/05/2001	Peter Kalisch	400004-2018	8674

7590 06/18/2004

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EXAMINER

CHIN, PAUL T

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 06/18/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/937,952

Applicant(s)

KALISCH ET AL.

Examiner

PAUL T. CHIN

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. Applicant's amendment filed March 30, 2004, and the arguments presented therewith with respect to the rejection(s) of claim(s) 9-11 and 13-15 under the rejection of 103(a) as being unpatentable over Plotka (1,252,226) or Breckenridge (885,580) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Gerwe (5,860,270) (see Paper No. 12) or Odenthal (5,768,856). Due to a new 35 USC 112 claim rejection and newly found prior art, a non-final office action follows below.

Information Disclosure Statement

2. The information disclosure statement filed May 20, 2002 fails to comply with 37 CFR 1.98(a)(3) because it does not include a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, of each patent listed that is not in the English language. It has been placed in the application file, but the information referred to therein has not been considered.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. **The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.** *Note that the phrase "in each case are picked up with a gripper mechanism" should be clearly described.*

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The disclosure is objected to because of the following informalities: it is pointed out that applicant is strongly recommended to make sure that there is no grammatical error in the specification. For example, in the abstract, in line 2, each comma -- , -- should be inserted after "a bottom side, and "two longitudinal sides". Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The exact meaning of the phrase "*are arranged in parallel in a row, and on a facing upper longitudinal side are picked up with a gripper mechanism*" (claim 9, lines 4-5) is not clearly understood as to how the upper longitudinal side is picked up by a gripper mechanism. Moreover, the phrase "from the bottom side and pass the same" (claim 9, last line) is vague and indefinite as to the exact meaning of "pass the same".

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 9-11 and 15, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Gerwe (5,860,270).

Gerwe (5,860,270) discloses an apparatus and a method for picking up rectangular pouches, comprising picking up the pouches (10E,10F) (at least 5 pouches) with a gripper mechanism having finger-like gripper (15,15) arranged in a substantially comb-like manner (see Figs. 1 and 3), wherein the gripper elements are moved in a parallel path (see an arrow of Figs. 1 and 3) between adjacent upper longitudinal sides of adjacent pouches. Re claim 15, Gerwe (5,860,270) further shows that each pouch has a particular longitudinal side that stands.

9. Claims 9-11 and 15, as best understood, are rejected under 35 U.S.C. 102(e) as being anticipated by Odenthal (5,768,8586).

Odenthal (5,768,8586) discloses an apparatus and a method for picking up rectangular packages or pouches, comprising picking up the pouches (3,3) (at least 5 pouches) with a gripper mechanism having finger-like gripper (9,19,19) (see Figs 1 and 2) arranged in a substantially comb-like manner (Fig. 3), wherein the gripper elements are moved in a parallel path (see an arrow of Fig. 3) between adjacent upper longitudinal sides of adjacent pouches.

Allowable Subject Matter

10. Claims 12-14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claims 9-15 have been considered but are moot in view of the new ground(s) of rejection.

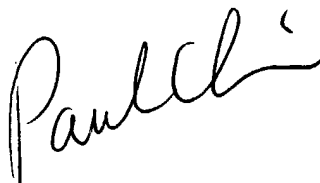
Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lance et al. (4,399,905) shows a gripper element.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



PAUL T. CHIN
Examiner
Art Unit 3652